F. M. S. REPORTS.

[SPECIAL JURISDICTION]
TERRELL, Ag. C. J.
July 17, 1936.

REFERENCE BY THE REGISTRAR OF TITLES, SELANGOR, UNDER SECTION 238 OF THE LAND CODE, CAP. 138.

[SELANGOR CIVIL APPLICATION No. 33 of 1936]

The Revised Edition of the Laws Enactment, 1932, sections 4, 6 and 9—Conclusiveness of the Revised Edition of the Laws of the Federated Malay States—The Land Code (Cap. 138) section 108 (i)—The Civil Procedure Code (Cap. 7) section 294.

The Civil Procedure Code (Amendment) Enactment, 1933, purported to amend section 275 of the Civil Procedure Code, 1918, but such amendment was only to come into force on publication in the Gazette. No such notification in the Gazette was ever published.

By the Revised Edition of the Laws Enactment, 1932, a Commissioner was appointed to prepare a new and revised edition of the Enactments of the Federated Malay States. In preparing this revised edition the Commissioner included the amendment to section 275 of the Civil Procedure Code—now section 294 of the Civil Procedure Code (Cap. 7)—although such amendment had never been brought into force by the necessary Gazette Notification.

In a reference to Court to determine whether section 294 of the Civil Procedure Code (Cap. 7) was law,

Held, that although the Commissioner had acted *ultra vires* in including the amendment to section 275 of the Civil Procedure Code—now section 294—in the Revised Edition, yet the Federal Council having by virtue of section 9 of the Revised Edition of the Laws Enactment, 1932, passed a resolution authorising the High Commissioner to bring the Revised Edition into force the effect of such resolution is that section 294 of the Civil Procedure Code (Cap. 7) is in force.

The Hon. Mr. C. G. Howell, Legal Adviser, (with him *H. C. Willan*, Deputy Legal Adviser) for the Registrar of Titles, Selangor: Under the Land Code (Cap. 138) a prohibitory order expires six months from the date of registration of the order whereas under new section 294 of the Civil Procedure Code (Cap. 7) it expires six months from the date of the order. Require decision of Court as to whether new section 294 of the Civil Procedure Code, which is included in the Revised Edition, is in force. Section 294 was part of the Civil Procedure Code (Amendment) Enactment, 1933, which had not been brought into force up to the time of publication of the Revised Edition and up to that time section 275 of the Civil Procedure Code, 1918, was in force. In preparing the Revised Edition the Commissioner omitted section 275 and inserted section 294 with a footnote as on page 274 of the Revised Edition.

The Commissioner's powers are contained in section 4 of the Revised Edition of the Laws Enactment, 1932, and he had no power to alter the substantive law except to omit Enactments repealed or spent.

No direct authority on the point but see *Halsbury* Vol. 27 paragraph 396 "A Statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary"—*Robins* v. *Robins*, (1907) 2 K.B. 13, 17.

The accidental omission of a provision from the Revised Edition does not amount to a repeal. Section 10 of the Colony Revised Edition of the Laws Ordinance, 1935, provides for repeal whereas in our Revised Edition Enactment there is no such provision.

The Commissioner acted *ultra vires* in including new section 294 Civil Procedure Code in the Revised Edition and the resolution of the Federal Council bringing the Revised Edition into force cannot cure the *ultra vires* act of the Commissioner because there is no provision for the Federal Council even seeing the Revised Edition before it is brought into force.

A Revised Edition, although authentic, is no more than a *prima facie* correct copy of the Enactments as passed in the same way as the King's printer's copy. If there is an inaccuracy in the King's printer's copy it can be compared with the Rolls. The Revised Edition Enactment nowhere provides that the Revised Edition is inclusive.

J. T. Tosswill for the Chairman, Sanitary Board, Kuala Lumpur: The Civil Procedure Code (Amendment) Enactment, 1933, had been passed by the Federal Council and under section 4 (ii) of the Revised Edition of the Laws Enactment, the Commissioner has power to consolidate the Civil Procedure Code, 1918, with the Civil Procedure Code (Amendment) Enactment, 1933.

The Federal Council had the opportunity, if they so wished, of considering and debating the Revised Edition, and they delegated their authority to the High Commissioner. The Federal Council were satisfied that the High Commissioner would not issue the proclamation bringing the Revised Edition into force unless he was satisfied that the Commissioner had acted *intra vires*. On the title page of the Revised Edition it is stated that they are the laws of the Federated Malay States as on the 31st day of December, 1934.

If it is held that the Revised Edition is not conclusive and that the old laws can be looked at then the whole object of preparing a Revised Edition fails. The Court should take into account the balance of convenience and decide that the Revised Edition is conclusive.

The Hon. Mr. C. G. Howell in reply.

Cur. Ad. Vult.

TERRELL, AG. C.J.—The facts of this case are as follows. The respondent Brouwer was in arrears with the assessment payable in respect of a piece of land in Kuala Lumpur of which he was the registered owner. The Chairman of the Sanitary Board thereupon obtained an order

attaching the land. The order is dated the 31st March, 1936, and is expressed to be in force for six months from the date of the order.

A prohibitory order was applied for in accordance with section 108 (i) of the Land Code, which provides that no attachment by order of Court shall affect any land until a copy of the prohibitory order under section 294 of the Civil Procedure Code has been presented. The order was duly presented and a memorial thereof made, but the Registrar of Titles is in doubt whether he should register such order, and accordingly refers the matter to the Supreme Court under the provisions of section 238 of the Land Code.

The difficulty which has arisen is that section 294 of the Civil Procedure Code, which was introduced by Enactment 25 of 1933 and purported to amend section 275 of the Civil Procedure Code, 1918, was only to come into force upon the publication of a notification to that effect in the Government Gazette. This was in consequence of section 1 (ii) of the 1933 Enactment but although the other provisions of the 1933 Enactment were brought into force by a Gazette notification of the 1st April, 1934, the amendments to certain sections, including section 275 were expressly omitted, and it is common ground that such sections have never been brought into force in the manner contemplated by section 1 (ii), that is to say by a notification by the Chief Secretary in the Government Gazette.

It is to be noted, however, that section 108 (i) of the Land Code expressly refers to section 294 of the Civil Procedure Code and not to take the old section 275, and on turning to the Civil Procedure Code it is found that the new sections which were never brought into force have been included, and that the old sections, which were to be automatically repealed on the new sections being brought into force (see e.g. section 19 of Enactment 25 of 1933) have been omitted.

It is now necessary to consider the provisions of the Revised Edition of the Laws Enactment, 1932. This Enactment provided for a Commissioner

> "to prepare a new and revised edition of the Enactments of the Federated Malay States and each of them."

The Commissioner had the usual powers to omit enactments or parts of enactments which had been repealed etc., to consolidate into one any two or more enactments in *pari materia*, to transfer any section from one enactment to any other enactment to which it may have properly belonged, and other similar powers. These powers which are given by section 4 are all powers to make amendments in form and not in substance, and in order that there might be no doubt on the subject, section 6 (i) provides as follows:—

> "The powers conferred on the Commissioner by section 4 shall not be taken to imply any power in him to make any alteration or amendment in the matter or substance of any enactment or part of an enactment."

The remaining sub-sections of section 6 provide the machinery by which alteration in substance may be effected, namely by the introduction of a Bill.

By section 5 the Commissioner was empowered to omit certain enactments as specified in the schedule. Such enactments were declared to remain in force until they had been expressly repealed. Section 275 of the Civil Procedure Code, 1918, and the other sections of Enactment 25 of 1933 which have not been brought into force, were not included in such schedule.

Then we come to section 9, which reads as follows:—

> (i) Upon the passing of a resolution of the Federal Council authorising him to do the same the High Commissioner may, by proclamation, order that the Revised Edition come into force from such date as he may think fit.
>
> (ii) From the date named in the proclamation the Revised Edition shall be in all Courts of Justice and for all purposes whatsoever the sole authentic edition of the Enactments of the Federated Malay States, so far as therein contained.

In pursuance of the powers given by section 9 (i), the Federal Council on the 24th January, 1936, passed a resolution authorising the High Commissioner to bring the Revised Edition into force by proclamation, and such proclamation was duly gazetted, and the Revised Edition has accordingly been in force since the date named in the proclamation, the 20th February, 1936.

The Revised Edition is stated on the fly-leaf to comprise the laws of the Federated Malay States and each of them in force on the 31st December, 1934, and includes of course the Civil Procedure Code. On the first page of that Code (page 274) there is a foot-note which reads as follows:—

> "Note:—The amendments to the following sections had not come into force on the 31st December, 1934, viz. 294, 295, 307, 320, 321, 325, 327, 331, and Forms 140, 148 and 168."

This statement, whatever its meaning and effect, is not strictly accurate, as it is not section 294 of the Revised Edition of the Civil Procedure Code which has been amended, but

section 275 of the Civil Procedure Code, 1918. However that may be, the foot-note calls attention to the fact that the sections included were not in force on the 31st December, 1934.

It cannot, I think, be disputed that the Commissioner acted *ultra vires* in including these sections and in excluding the sections which were previously in force. It is also argued that the Commissioner had no power to omit section 1 (ii) of the 1933 Enactment under which alone the new section could be brought into force. The question which arises, however, is, assuming that the Commissioner acted *ultra vires*, what is the effect of the inclusion of the new sections, coupled with the resolution of the Federal Council, the proclamation by the High Commissioner, and the express provisions of section 9 (ii) quoted above?

In construing the effect of section 9 the Statute Law Revision Acts in England offer little guide. These Acts merely purported to repeal certain acts or parts of acts which by lapse of time had become unnecessary. As Joyce, J. said in *Robins* v. *Robins*, (1907) 2 K.B. 13, 17.

> "I may say generally that no repeal by a Statute Law Revision Act alters the law in any respect."

There has in fact never been a Revised Edition of the Laws purporting to replace existing legislation at any particular date.

The corresponding legislation in the Colony, however, forms a closer parallel. The first Statute Law Revision Ordinance was passed in 1910 (Ordinance No. XXIII), and was entitled the Statute Law Ordinance 1910. Section 8 (2) reads as follows:—

> "On some convenient date.....the Governor shall by notification in the Gazette, declare that the copies of the said new and revised edition are ready for issue at such place or places as are specified in the notification."

And section 9 reads:—

> "Immediately on the publication of such notification, the new and revised edition shall be deemed to be without any question in all Courts of Justice and for all purposes whatsoever, the sole and only proper Statute book of this Colony, up to the date of the latest of the Ordinances contained therein."

It will be seen that section 9 as drafted did not in express words repeal previous legislation. This omission was rectified by section 4 of Ordinance 12 of 1917, which reads as follows:—

> "Section 9 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—
>
> 9—(1) On some convenient date after such deposit the Governor shall by notification in the Gazette declare what Ordinances are repealed by the said volume, and such Ordinances shall then stand repealed and in their place the Ordinances contained in the said volume shall be deemed to be without any question, in all Courts of Justice and for all purposes whatsoever the law of the Colony as far as is therein contained.
>
> (2) In the said notification the place or places at which copies of the said volume may be obtained shall be stated."

The provisions of this section as to the repeal of previous legislation have in substance been reproduced in the Revised Edition of the Laws Ordinances of 1925 and of 1936. In addition section 7 (1) of the Ordinance of 1925 provided that the Governor should only issue the proclamation after the Revised Edition had been approved by the Legislative Council, and section 10 (1) of the Ordinance of 1936 goes further and provides that the Revised Edition shall be laid before the Legislative Council, which may then by resolution authorise the Governor to bring the Revised Edition into force.

On referring back to the Revised Edition of the Laws Enactment, 1932, it will be seen that section 9 (ii) is based on the original section 9 of the 1910 Ordinance of the Colony, the 1917 amendment being disregarded. Section 9 (i) provides for a resolution of the Federal Council, just as the 1925 and 1936 Ordinances of the Colony provide for resolution by the Legislative Council. The Federated Malay States Enactment, however, omits to provide that the Revised Edition should be laid before the Federal Council or even that the Council should approve it. Now I do not think that it can be presumed that because the Federated Malay States Enactment, though based on certain Ordinances of the Colony, exhibits certain important differences, such differences necessarily result in the provisions of the Enactment having a different effect. The Enactment must be given its plain and ordinary meaning having regard to the objects which the Enactment was intended to achieve.

Looked at in this light I think that section 9 (i) means that the High Commissioner was entitled to rely on the resolution of the Federal Council, that it was not intended to be a mere formality, and that the Federal Council had the right to refuse to pass the resolution if the Commissioner had not complied with the provisions of the Enactment which define his powers. I am informed by the learned Legal Adviser that in fact the Federal Council passed

the resolution without even having seen the Revised Edition. This is not strictly in evidence before me, but even accepting that statement, it does not appear to me to make the slightest difference. It only means that the Federal Council, having full confidence that the Commissioner, Mr. Gibson, would do nothing *ultra vires*, decided to give him a blank cheque. The cheque unfortunately was not completed in quite the manner in which Mr. Gibson was authorised to complete it, but having trusted him, they cannot complain if Mr. Gibson exceeded his authority. The High Commissioner receiving the necessary authority naturally acted upon it without further question.

Upon the proclamation being gazetted the Revised Edition was duly brought into force, and thereupon "for all purposes whatsoever" became "the sole authentic edition of the Enactments of the Federated Malay States so far as therein contained."

The Civil Procedure Code is certainly contained in the Revised Edition at page 274 *et seq.*, and the sub-section says that it is the only edition of the Civil Procedure Code which can be looked at. The Civil Procedure Code of 1918 and the amending Enactment of 1933 are no longer valid, because there cannot be more than one 'sole authentic edition' at the same time. The sub-section certainly omits to say that the previous Enactments are repealed, but that is the only possible result.

It may be pointed out that any other interpretation would result in chaos. There may be many things. which the Commissioner purported to do under section 4, which are not strictly covered. He may have transferred a section from one enactment to another enactment to which he thought it more properly belonged. Can it be argued at a subsequent date that the section did not "properly belong" to the enactment to which it was transferred, and is accordingly inoperative?

In the reference before me, as I have stated, no attachment under section 180 (i) of the Land Code can affect land unless a prohibitory order has been obtained under section 294 of the Civil Procedure Code. If section 294 is not in force, there is no provision that such an order can still be obtained under section 275 of the Civil Procedure Code, 1918, unless it can be argued that section 108 (i) of the Land Code is also *ultra vires* and should be disregarded, and reliance placed on section 108 (i) of the Land Code 1926. If such arguments prevailed, the whole object of having a Revised Edition would be miscarried, and if section 108 (i) of the Land Code is in force and section 294 of the Civil Procedure Code is not, the result would be that no attachment can be made at all, and it may safely be presumed that the legislature had no intention to bring about such a result.

I hold, therefore, that the attachment presented to the Registrar of Titles is in order and should be registered.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C. J.

October 23, 1936.

IN RE K. ARUMUGAM
EX PARTE J. K. R. LEONARD

[SELANGOR BANKRUPTCY No. 46 of 1936.]

The Bankruptcy Enactment (Cap. 55) section 81—Proceedings in wrong Court—Validity of such proceedings.

Section 81 of the Bankruptcy Enactment (Cap. 55) gives a wide discretion to the Court and even when bankruptcy proceedings are commenced in the wrong Court the Court has power to retain the proceedings in such Court if it is for the convenience of the Official Assignee and there will be no hardship to the debtor.

The facts appear sufficiently from the judgment.

A. Ramani for the petitioner creditor.

F. A. Briggs for the debtor.

TERRELL, AG. C.J.—The petition was presented in respect of a judgment for $594.05, and non-compliance with a bankruptcy notice. The judgment and service of the bankruptcy notice and of the petition were not disputed. The debtor, however, filed an affidavit opposing the petition on the ground that he has not for the past six months resided in Kuala Lumpur, and that the bankruptcy notice and petition should not have been filed in Kuala Lumpur. From the evidence it appeared that the debtor used to rent a house in Seremban, but he gave that up on the 6th of April, 1936, and since then appears to have had no fixed abode. On the other hand he is a member of the Rubber Assessment Committee, which holds its meeting in Kuala Lumpur, and admittedly the debtor is frequently in Kuala Lumpur to attend to his duties on that Committee.

It appears to me, in view of section 81 of the Bankruptcy Enactment, that it is unnecessary for me to come to a finding as to where the debtor resided or carried on business during the six months immediately preceding the presentation of the petition. This section reads as follows:—

"(i) The Supreme Court in each State shall have jurisdiction in bankruptcy under this Enactment.

(ii) The petition shall be presented to a Court of a Judge in any State in which the debtor has resided or carried on business during the six months immediately preceding the presentation of the petition.

(iii) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court of a Judge.

(iv) Any proceeding in bankruptcy may at any time and at any stage thereof, either with or without the